82-866

NO._____

Office - Supreme Court
FILED
NOV 23 1982
ALEXANDER L. STEVAS,
CLERK

IN THE SUPREME COURT

OF

THE UNITED STATES

OCTOBER TERM, 1982

MARY VAUGHN

PETITIONER,

VS.

HINCHY, WITTE, WOOD, ANDERSON, HODGES & BOSTWICK

LAW FIRM

RESPONDENTS.

PETITION FOR A WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARY VAUGHN, PRO SE
1119 TWENTY-EIGHTH STREET
SAN DIEGO, CALIFORNIA 92102
TELEPHONE: 619/233-0505

QUESTION PRESENTED

(1)

Was it in the interests of substantial justice for the District Court to dismiss plaintiff's complaint without leave to amend and with prejudice, on jurisdiction grounds, when facts alleged in the complaint might have supported a cause of action within the jurisdiction of the District Court? (D.C. No. 1053)

TABLE OF CONTENTS

	Page
OPINION BELOW	2
JURISDICTION	2,3
PARTIES	3
STATUTORY PROVISIONS INVOLVED	4
STATEMENT OF THE CASE . .	4-9
ARGUMENT AND REASONS FOR GRANTING THE WRIT	9-12
CONCLUSION	13
DECLARATION OF SERVICE . .	14

TABLE OF AUTHORITIES CITED

CASES

	Page
In determining whether subject matter jurisdiction exists, the court will construe the complaint broadly. If there are any facts from which jurisdiction might be inferred, the motion should be denied. (Thomson v. Gaskill, 315 U.S. 442 (1942).	10
Complaint should not be dismissed merely because plaintiff's allegations do not support particular legal theory he advances, nor should complaint be dismissed that does not state with precision all elements that give rise to legal basis for recovery or merely because court doubts that plaintiff will prevail in action. Bremlet v.	11

Page

Wilson (1974, CA 8 Ark.) 495 F2d 714 (disagreed with Ingraham v. Wright (CA 5 Fla) 525 F2d 909, affd. 430 U.S. 651 51 L. Ed., 2d. 711, 97 S. Ct. 1401.).....

If complaint states any claim on which plaintiff might possibly recover, complaint should not be dismissed without trial or motion for summary judgment. (Sunbeam Corp. v. Payless Drug Stores (1953 D.C. Cal) 113 F Supp. 31.) 11

Complaint must be construed in light most favorable to plaintiff, and motion to dismiss should not be granted it if is reasonably conceivable that plaintiff may establish a cause of action. (Cohen v. United States (1942 CA 8 Minn.) 129 F 2d 733.) 12

Page

Pro se civil rights complaint is to be liberally construed; moreever, motion to dismiss (prisoner's) rights, action for failure to state claim is subject to very strict standard of review. (United States ex. rel. Smith v. Robinson, (1980, Ed. PA.) 495 F Supp. 696). 12

Plaintiff appearing pro se deserves to have complaint reviewed by less stringent standard then when drafted by lawyer. (Morpurgo v. Board of Higher Education (1976, DC NY) 423 F Supp. 704.) 12

Allegations in a complaint are to be accepted as true for purposes of considering a motion to dismiss under Rule 12 (b). Hochman v. BOARD OF EDUCATION (1976 CA 3 N.J.). 534 F 2d 1094.) 12

NUMBER _____

IN THE SUPREME COURT

OF THE UNITED STATES

OCTOBER TERM

1982

PETITIONER

MARY VAUGHN

VS

HINCHY, WITTE, WOOD, ANDERSON, HODGES AND BOSTWICK LAW FIRM, RESPONDENTS.

STATUTES

UNITED STATES CODE: FEDERAL RULES OF CIVIL PROCEDURE, RULE 8 (f)

PETITION FOR A WRIT OF CERTIORARI

To the United States District Court, Southern District of California and the United States Court of Appeals for the Ninth Circuit

THE PETITIONER, MARY VAUGHN, respectfully prays that a Writ of Certiorari issue per-

mitting her to file an amended complaint, with the assistance of counsel in the United States District Court, Southern District of California, in the matter of Mary Vaughn, Petitioner

vs.

Hinchy,Witte,Wood,Anderson,Hodges, and Bostsi dk Law Firm.

Docket Number 80-1053.

OPINION BELOW

The Memorandum of the Court of Appeals (Ninth Circuit), in this matter, appears in the appendix hereto. (EXHIBITS A,B,C & D)

JURISDICTION

The judgment of the Court of Appeals for the Ninth Circuit was entered on May 28, 1982, and its Order denying a petition for rehearing was entered on July 28, 1982. A petition for an extension of time within which to file this Petition was timely filed and an extension of time of thirty days beyond the ninety day period of time was granted by this Court on October 19, 1982, extending time to and including November 24, 1982. (EXHIBIT - A)

Jurisdiction for this petition arises under the Federal Rules of Civil Procedure, Rule 8 (f) which governs the construction of pleadings in the interest of justice.

PARTIES

The sole party plaintiff is Mary Vaughn.

The party's defendants are: Hinchy,Witte,Wood,Anderson,Hodges and Bostwick Law Firm and their address is:
3200-4th. Avenue
San Diego, California 92013

STATUTORY PROVISIONS INVOLVED

Federal Rules of Civil Procedure (Rule 8 (f).

Federal Rules of Civil Procedure, (Rule 12 (b).

STATEMENT OF THE CASE

In 1976, Petitioner, Mary Vaughn, hired the defendant/respondent law firm, Hinchy,Witte,Wood,Anderson,Hodges and Bostwick, to represent her and to pursue her interests in a case against a company that had fraudulently sold her goods. The Hinchy law firm failed to file a timely action against the offending company, thus losing her cause of action; and they further engaged in other conduct towards petitioner that

caused her financial harm and damage, in particular, forcing her into a filing in Bankruptcy that was both unnecessary, fraudulent, and against her will. The bankruptcy matter was finally dismissed in 1980 when petitioner refused to sign the statement of creditors which she claimed was false and fraudulent.

Petitoner attempted to discharge the Hinchy firm as her attorneys, but they would not be fired; she made many attempts to hire other counsel to replace them, but this was not successful and even after the Hinchy firm dismissed itself as her attorneys of record, following the bankruptcy dismissal, she was thwarted in every attempt to hire an attorney in San Diego County, California, who would pursue her claim for damages and judicial relief against

the respondent, Hinchy, Witte, Wood, Anderson, Hodges, and Bostwick Law Firm.

(The affidavit of Mary Vaughn filed with this Court in support of her request for extension of time, and which is set forth in the appendix hereto describes her attempts to obtain legal counsel, appendix - EXHIBIT E page 1 and following).

Petitioner was forced to defend herself and thus was compelled, not of choice, to sue and file her complaint against defendant/respondents as her own attorney, in pro se.

The lawsuit filed in pro se alleged malpractice, false billing, and a violation of civil rights. The complaint prepared by petitioner was noticably without proper form and contained excessive berbage and rhetoric. However, the facts upon which she leased claims for

relief were duly alleged and recited. The causes of malpractice and false billing were and are outside the subject matter jurisdiction of the Federal District Court since they are civil matters and the case was without diversity of citizenship. The facts alleged as violating her civil rights, a conspiracy between federal judges and defendant attorneys did not fall within the jurisdiction of the federal civil rights legislation cited; namely Title 42, section 1983. Hence petitioner's complaint was properly dismissed for lack of jurisdiction in light of the federal civil rights legislation cited.

However, and nonetheless petitioner's complaint alleged that a conspiracy existed between the Hinchy, Witte,Wood,Hodges,Anderson and Bostwick

Law Firm and federal judges to deny her access to the courts. At no time does the Order of the District Court dismissing her complaint (See Appendix, D- 1), or the Memorandum or Order of the Ninth Circuit Court of Appeals (see Appendix B-1 & C-1) suggest that the facts alleged in petitioner's complaint were frivolous.

The statement of the case and facts as set forth in the Ninth Circuit Court's Memorandum is correct. (See Appendix C-1)

The Order of the Federal District Court, Southern District of California, was that plaintiff/petitioner's complaint be dismissed with prejudice, and without leave to amend. (EXHIBIT D-1)

Petitioner believes that the facts alleged in her complaint that she was denied access through the courts by a conspiracy, believes the respondent Hinchy,Witte,Wood,Anderson, Hodges and

Bostwick Law Firm and the federal judges if true, would have given her a right to judicial relief of some sort; and that if the judicial relief she was entitled to did not fall within the protection of the civil rights rules she innocently and ignorantly relied on, then she should have been permitted by the District Court to amend her complaint, if possible, to cite a rule or theory of relief that was proper and acceptable.

ARGUMENT AND REASONS FOR GRANTING THE WRIT

Petitioner alleged in her complaint that she was denied access to the courts because of a conspiracy between the Hinchy,Witte,Wood,Anderson,Hodges and Bostwick Law Firm and federal bankruptcy judges. If the allegations be true, as

they must be assumed to be for these purposes, surely petitoner is entitled to some form of judicial relief in the federal courts. If not on a theory of denial of civil rights as petitioner claimed, then upon some other theory of relief. She should be permitted to amend her complaint, in the interests of justice, to set forth such other and proper theory of relief acceptable to the federal courts. And such is the policy of federal procedural justice.

All pleadings shall be so construed as to do substantial justice. (Rule 8 (f) Federal Rules of Civil Procedure).

In determining whether subject matter jurisdiction exists, the court will construe the complaint broadly. If there are any facts from which jurisdiction might be inferred, the motion should be denied. (Thomson v. Gaskill, 315 U.S. 442 (1942).

Complaint should not be dismissed merely because Plaintiff's allegations do not support particular legal theory he advances, nor should complaint be dismissed that does not state with precision all elements that give rise to legal basis for recovery, or merely because court doubts that plaintiff will prevail in action. Bremlet v. Wilson (1974 Ca 8 Ark.) 495 F2d 714, (Disagreed with Ingraham v. Wright (1974, CA 5 FIM.) 525 F2d 909, affd. 430 U.S. 651, 51 L.Ed. 2d 711, 97 S.Ct. 1401.)

If complaint states any claim on which plaintiff might possibly recover, complaint should not be dismissed without trial or motion for summary judgment. (Sunbeam Corp. v. Payless Drug Stores (1953 D.C. Cal.) 113 F Supp. 31.)

Complaint must be construed in light most favorable to plaintiff, and motion to dismiss should not be granted

if it is reasonably conceivable that plaintiff may establish a cause of action. (Cohen v. United States (1942 CA 8 Minn.) 129 F 2d 733.)

Pro se civil rights complaint is to be liberally construed; moreover, motion to dismiss (Prisoner's) rights, action for failure to state claim is subject to very strict standard of review. (United States ex. rel. Smith v. Robinsen (1980, Ed PA.) 495 F Supp. 696.)

Plaintiff appearing pro se deserves to have complaint reviewed by less stringent standard than when drafted by lawyers. (Morpurgo v. Board of Higher Education (1976, DC NY) 423 F Supp. 704.)

Allegations in a complaint are to be accepted as true for purposes of considering a motion to dismiss under Rule 12 (b). Hochman v. Board of Education (1976 CA 3 NU). 534 F 2d 1094.)

CONCLUSION

For the foregoing reasons, petitioner respectfully prays that a Writ of Certiorari should issue permitting her to file an amended complaint in the Federal District Court, with the advice, counsel, and participation of an attorney in good standing of the Bar Association of the State of California.

Respectfully submitted,

Mary Vaughn

Mary Vaughn
Petitioner

DATED: November NOV 22 1982 1982

Appendix follows:

IN THE SUPREME COURT OF THE UNITED STATES

WASHINGTON, D. C. 20543

DECLARATION OF SERVICE BY MAIL

I, MARY VAUGHN AM EMPLOYED IN THE CITY OF SAN DIEGO, CALIFORNIA @ 1119 - 28TH STREET, SAN DIEGO, CALIFORNIA. I SERVED THE FOLLOWING DOCUMENTS TO THE OPPOSING COUNSEL:

-3 COPIES OF PETITION FOR HEARING FOR WRIT OF CERTIORARI: MARY VAUGHN, PETITIONER, VS. HINCHY/WITTE LAW FIRM

TO: AULT, MIDLAM & REYNOLDS LAW FIRM (FOR RESPONDENTS)
5030 CAMINO DE LA SIESTA, ROOM 201
SAN DIEGO, CALIFORNIA 92108

I THEN SEALED THE ENVELOPE, AND WITH THE POSTAGE THEREON FULLY PREPAID, DEPOSITED THE ENVELOPE IN THE UNITED STATES MAIL AT SAN DIEGO, CALIFORNIA, ON NOVEMBER NOV 22 1982 1982.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT. EXECUTED ON NOVEMBER NOV 22 1982 1982 @ SAN DIEGO, CALIFORNIA.

Mary Vaughn PETITIONER
PRO SE, MARY VAUGHN

APPENDICES:

(1) EXHIBIT A

(2) EXHIBIT B

(3) EXHIBIT C

(4) EXHIBIT D

(5) EXHIBIT E

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C. 20543

October 20, 1982

William H. Tuttle, Esq.
Foothill College
Business Division
12345 Elmonte Road
Los Altos Hills, California 94022

RE: Mary Vaughn v. Hinchy, Witte, Wood, Anderson, Hodges and Bostwick, Attorneys at Law
A-362

Dear Mr. Tuttle:

Your application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Rehnquist, who on October 19, 1982, signed an order extending your time to and including November 24, 1982.

A copy of the Justice's order is enclosed.

Because you did not provide a certificate of service with the name(s) and address(es) of opposing counsel, I must ask that you notify them of the disposition of this application by providing them with a copy of this letter.

Very truly yours,

ALEXANDER L. STEVAS, Clerk

By Katherine A. Downs

Katherine A. Downs
Assistant Clerk

rjb
encl.
cc(letter only): Phillip Winberry, Esq., Esq., Clerk, U. S. Court of Appeals, Ninth Circuit (your No. 81-5146)

EXHIBIT A

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARY VAUGHN, Plaintiff-Appellant, v. HINCHY, WITTE, WOOD, ANDERSON, HODGES AND BOSTWICK, Defendant-Appellee.	NO. 81-5146 D.C. No. 80-1053 ORDER JULY 28, 1982

Appeal from the United States District Court for the Southern District of California

The Honorable Judith Keep, District Judge, Presiding

Before: PREGERSON, NELSON, and NORRIS, Circuit Judges.

The panel as constituted in the above case has voted to deny the petition for rehearing and to reject the suggestion for

EXHIBIT B

a rehearing en banc.

The full court has been advised of the suggestion for an en banc hearing, and no active judge of the court has requested a vote on the suggestion for rehearing en banc. Fed. R. App. P. 35 (b).

The petition for rehearing is denied and the suggestion for a rehearing en banc is rejected.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARY VAUGHN,

Plaintiff-Appellant,

v.

HINCHY, WITTE, WOOD, ANDERSON, HODGES AND BOSTWICK,

Defendant-Appellee.

No. 81-5146

D.C. No. 80-1053

MEMORANDUM

MAY 28, 1982

Appeal from the United States District Court for the Southern District of California
The Honorable Judith Keep, District Judge, Presiding

Before: PREGERSON, NELSON, and NORRIS, Circuit Judges.

We unanimously agree that this case is appropriate for submission without oral

EXHIBIT C

argument.

Vaughn brought suit against the law firm of Hinchy, Witte, Wood, Anderson, Hodges and Bostwick (Hinchy, Witte). She alleged that the law firm had: (1) engaged in legal malpractice and that as a result of the malpractice she was deproved of her property; (2) billed her for fictitious work; and (3) conspired with two bankruptcy judges to deny her access to the courts. The district court dismissed Vaughn's action for lack of subject matter jurisdiction and Vaughn appeals.

Vaughn's allegations that Hinchy, Witte engaged in legal malpractice, fictitiously billed her and misappropriated her money do not give rise to federal questions actionable in the federal courts. Because Vaughn and the members of the Hinchy, Witte law firm are California

residents, diversity jurisdiction is also unavailable.

Vaughn also alleges that she was denied access to the courts because of a conspiracy between Hinchy, Witte and federal bankruptcy judges. This allegation does not give rise to a cause of action under section 1983 because the bankruptcy judges mentioned in the complaint are federal officials, and section 1983 does not apply to the acts of federal officials. See Gillespie v. Civiletti, 629 F.2d 637, 641 (9th Cir. 1980). The allegation also does not give rise to a cause of action under section 1985(3) because there is no allegation that there was a "racially or class-based, invidiously discriminatory animus" behind the alleged conspiracy. Id.

Finally, we conclude that Vaughn's

complaint does not state a cause of action for denial of constitutional rights under Bivens. Her allegations simply do not support her contention that the bankruptcy judges conspired to deny her access to the courts. Cf. Gillespie, 629 F.2d at 641 n.2, 642 and 642 n.3. (A prisoner who is denied access to the courts can bring a Bivens-type action for the alleged due process violation.) Thus the dismissal of Vaughn's action was proper. See Aldabe v. Aldabe, 616 F.2d 1089, 1092 (9th Cir. 1980).

Hinchy, Witte requests that it be awarded double costs and attorney's fees pursuant to Fed. R. App. P. 38 and 28 U.S.C. § 1912. This request is denied.

AFFIRMED.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

MARY VAUGHN,

Plaintiff,

v.

HINCHY, WITTE, WOOD, ANDERSON, HODGES AND BOSTWICK,

Defendant.

NO. 80-1053-K-I

ORDER RE DEFENDANT'S MOTIONS TO DISMISS, TO STRIKE AND FOR A MORE DEFINITE STATEMENT.

OCTOBER 6, 1980

The defendant's motions to strike, to dismiss, and for a more definite statement in the above-entitled action came on regularly for hearing on September 15, 1980, at 10:30 a.m. in Department 6 of the above-entitled Court, the Honorable Judith N. Keep, Judge Presiding. James Gorman of the firm of Ault, Midlam and Reynolds appeared on behalf of the moving defendant, HINCHY, WITTE, WOOD, ANDERSON AND HODGES, erroneously sued herein as HINCHY, WITTE,

EXHIBIT D

WOOD, ANDERSON, HODGES AND BOSTWICK. Plaintiff, MARY VAUGHN appeared pro se. The Court, having read the documents filed in support of said motions, and the Court having considered oral argument by the plaintiff, and the Court having been fully advised in the premises.

IT IS HEREBY ORDERED that the plaintiff's complaint be and the same is hereby dismissed without leave to amend. The Court granted defendant's motion to dismiss on the grounds that the Court lacked jurisdiction over the subject matter. The Court made no ruling on the following additional motions by defendant: (1) Defendant's Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted; (2) Defendant's Motion to Strike on the grounds that the complaint is redundant, immaterial, impertinent, and scandalous; (3) Defendant's Motion to

Strike on the grounds that the complaint is sham and false; (4) Defendant's Alternative Motion for a More Definite Statement.

The defendant's motion to dismiss having been granted without leave to amend on September 15, 1980, in Department 6 of the above-entitled Court, the Honorable Judith N. Keep, Judge Presiding, and it being ordered by said Court that said motion to dismiss be granted without leave to amend, and an application having been made to the Clerk of said Court for entry of judgment in favor of defendant HINCHY, WITTE, WOOD, ANDERSON AND HODGES, erroneously sued herein as HINCHY, WITTE, WOOD, ANDERSON, HODGES AND BOSTWICK, and against the plaintiff, MARY VAUGHN, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that plaintiff's complaint be and

the same hereby is dismissed with prejudice

DATED:

12/6/80

Judith N. Keep

United States District Judge

JUDITH N. KEEP

Approved as to form:

Refused

MARY VAUGHN

AFFIDAVIT

I, MARY VAUGHN, declare and say,

That I am a proper party to the above-captioned matter.

That I am without an attorney of record in this matter; and that BALBOA MANOR, INC., a corporation of which I am the principle owner and manager, which health care facilities business is an integral and necessary aspect of my case, is also without an attorney of record. The reason why neither I nor my corporation are properly represented by counsel is that though I have tried very hard to retain counsel, I have been, to date, unable to find an attorney who would, after considering my legal needs and goals, accept being my attorney of record. I believe that one of the main reasons why no attorney in San Diego County would take on my case is that it

EXHIBIT E

necessarily involves suing for malpractice a prominent San Diego Law Firm, namely, HINCHY, WITTE, WOOD, ANDERSON, HODGES AND BOSTWICK.

Contradictory as it may sound, but my legal problems, with which I am now confronted, and for which I desperately need a competent lawyer, are directly the result of my having hired a lawyer, the firm of Hinchy et al (which I will refer to hereafter as the "Hinchy firm".) I hired the Hinchy firm to protect my rights in a case which to me was clearly fraud; that is a company, American States Leasing to whom I had paid the sum of $16,440.00 under contract for certain goods, did never, and has never delivered the goods or refunded my money. The Hinchy firm assured me they could and would help me. They have never done so, although I have paid <u>them</u> the sum of $14,333.00,

and they have since sued me for more. The Hinchy firm not only lost me my potential case of fraud against American States Leasing, for which I had hired them, by failing to file a complaint within the three year statute of limitations, but they, in the course of serving, and charging me, caused me to lose a valuable lease option I had obtained, forced me to petition for a Chapter 11 bankruptcy, which my business did not need or want, but which would have resulted in actually defrauding the Small Business Administration of the Federal government, since Hinchy firm was demanding that I sign false creditor statements. The bankruptcy court caused me to sell my home, and although I had been appointed the trustee in the matter, Mr. Hinchy of the Hinchy firm took the $36,000.00 realized from the sale, put

it in his firm's account and refused to give it to me for the needs of my business. It took an order of the Federal Court to make Mr. Hinchy part with my money. The bankruptcy case was finally dropped by the court, but after I had suffered irreparable harm, when and because I steadfastedly refused to sign a formal document called the Plan of Arrangement, necessary to the proceedings, because I knew, and I had so informed the court that document as prepared by the Hinchy firm was full of lies and false creditor claims, and that to sign it would be perpetuating a crime against the United States. The Peitition in Bankruptcy which I had signed under duress in the offices of the Hinchy firm, fortunately was not the only document I had to sign. With the dismissal of the bankruptcy case,

Mr. Hinchy no longer wanted to act as my attorney. For nearly two years I had been trying to dismiss him, but he would not let me get rid of him, though I understood I had a right to change my attorney. In resigning as my attorney, he also resigned as my corporation's attorney and filed a motion, signed by him substituting my corporation as its own attorney to replace the Hinchy firm. I was told later that a corporation could not represent itself by its owner or anyone except an attorney.

Most of my attempts at getting an attorney were for the purpose of replacing the Hinchy firm as my attorneys of record, because they were ruining me. But after Hinchy quit, I could still not get someone who would do legal battle with the Hinchy firm, or defend me against them.

There follows now, the primary purpose of this declaration, the description of my oddysey in search of a lawyer, both for me and my corporation in San Diego County. (Concerning above please see EXHIBITS A, B, and C.)

1. THE FIRST LAWYER I contacted, on referral from a friend, to substitute for me in place of Hinchy firm, is one whose name I am pledged at this time not to reveal. He is afraid. He told me, to my face, "Mrs. Vaughn, Mr. Witte, in that law firm informed me that should I take your case, I will be in trouble with the judge; I cannot afford to be in trouble with the judges so I'm very sorry I cannot take your case." I do not here allege that what he said concerning judges is true, but I do allege the truth of the fact tha t he said those words to me.

2. JAMES P. PIERIK. I do not recall who referred me to Mr. Pierik. He came to my office at Balboa Manor's, Inc. He listened to my story and discussed some aspects with me, and then informed me that it was not the type of case he handled. He charged me and I paid him $150.00.

3. IRWIN SCHROEDER. His name came to my attention from a newspaper article of a case in which he was involved. I went to his office, discussed, and left a packet of evidentiary material with him to study. He had shown an interest in the matter. Later, however, he returned my materials with a note explaining that he could not take the case.

4. BENJAMIN WEISSMANN (and Partner). I remembered that Mr. Weissmann had provided me with some legal services in 1973. Now, in 1977 I contacted him again. I

explained my case and that I wanted him to be substituted for the Hinchy firm. He agreed to represent me and I paid him a $600 retainer in advance. He was to be appearing for me, in place of Hinchy firm, before the Hon. Ross Pyle, judge of the U.S. District Court. When Mr. Weissmann and his partner met me at the court, Mr. Hodges of the Hinchy firm was there. I introduced Mr. Weissmann to him and told Mr. Hodges that I was replacing him with Mr. Weissmann. Mr. Hodges then in an abusive tone told Mr. Weissmann that my case was his case and that Mr. Weissmann better stay out of it. Mr. Weissmann and his associate backed off and rapidly left the court house. Mr. Weissmann thus did not take my case. And he did not refund the $600.00 retainer for agreeing to do so.

5. ROY SHORT. Mr. Short was

referred to me by a Ms. Melissa Lieberman whom I had met when she was a law clerk. He reviewed my case and told me that he thought there was a good case. He raised the point that I probably had a good case of malpractice against the Hinchy firm. But, he could not handle it.

6. DAVID R. THOMPSON, and MICHAEL BERLIN. I had been referred to a Mr. Michael Berlin, but when I went to his office, he was out, so I presented my case and papers to his partner, Mr. Thompson. I was told to return another day and I did so and then saw Mr. Berlin. Mr. Berlin telephoned to the Hinchy firm (so he told me) and after talking with someone there told me that I already had a good lawyer and thus he could not take my case. He dismissed my argument and plea that it was that "good lawyer"

that I wanted to replace with a new one who would better serve me.

7. FLOYD MORROW. I had first met and became aware of Mr. Morrow as an attorney and City Councilperson when I had had the occasion to deal with the City Council in connection with my health service business. I was aware that he had returned to private practice so I sought him out. When I explained to him that I wanted him to replace the Hinchy firm and possibly sue them, he told me that he had not yet re-established himself in private practice to take on a case such as mine.

8. DENNIS DORMAN. I had met Mr. Dorman when he was the instructor of a legal-medical course that I took sponsored by the California Nursing Homes Association. I was most impressed with him, one, because he seemed

like a fighter, and two, because my mother's maiden name was Dorman. I contacted him by telephone and he told me to call him back later after he had a chance to talk with the Hinchy firm and arrange to get my fiel. When I called later he told me, almost excited, that Mr. Witte of the Hinchy firm had invited him (Mr. Dorman) and his partner (father) to take offices in a new building that the Hinchy firm were having built. He had confirmed it with his father and they had accepted the Witte offer. Therefore he told me that he could not handle my case now because it might present a conflict of interest.

Now, in the meantime, time is passing and the bankruptcy case is over and the Hinchy firm has quit me. In fact, the Hinchy firm has now filed a suit against me in the Superior Court

(May 30, 1980) seeking some $32,024.32 in alleged fees for alleged legal services they claimed to have provided me. Please recall, I had already paid Hinchy firm $14,434.00, and they had only ever caused me harm and loss. And I cannot help but bring to the court's attention that the sum for which Hinchy firm sued me almost exactly equaled the $33,000.00 received for the sale of my home which the Hinchy firm had placed in <u>their</u> bank account rather than my trustee account, and in regard to which it took a court order to get them to give up that money to me. I can only believe they still want that money back. I know of no legal service they ahve performed for me which would entitle them to one cent. I was informed that it was strict liability on an attorney who failed to file a client's complaint on time. Hinchy firm failed

to do so, received $14,434.00 for that non-performance, and yet no Court has seemed to be concerned with the substance of those facts, because my form has been imperfect. And Hinchy now sues for the $32,024.32. At least, I thought, I should now be able to get an attorney to defend me from this suit, since Hinchy can no longer demand that my case is theirs. But could I now get an attorney, not to substitute for another, but to represent me first hand? NO.

9. KENNETH BARWICK. I had confided my legal problems to one of my patient's sister, who was a Jehovah's Witness, and she referred me to an attorney who had represented her church. I did contact him and he considered my case, but he could not take it.

10. RICHARD VAUGHN. A neighbor referred me to his office. Mr. Vaughn

it turned out was semi-retired, so I talked with one of his partners at the office. After hearing my tale, he informed me they were too busy with an ongoing trial, and that perhaps I should look outside of San Diego; he suggested Oceanside, Mr. Michael Berlin, No. 6 above, they were in Oceanside.)

11. PETER HUGHES. I just happened to be in the building in which he maintains his office, I believe a bank building, saw the name on the door and went in. I recognized his name of that of a popular attorney in San Diego. I talked with him as he ate his lunch. When I told him that I wanted to sue the Hinchy firm, he told me he didn't handle plaintiff's cases. I asked him to refer me to a lawyer who could help me. He politely told me that he would not want to do so.

12. ELLIOTT PIERCE. Recommended to me by the San Diego Bar Association. The United States Attorney had earlier advised me (after I had sought out their help in locating an attorney) to contact the local Bar. I went to Mr. Pierce's office with all my papers about three weeks prior to a scheduled hearing in my case. He had me leave them with him to go over. Two weeks later he had not yet looked at them and wanted another week. I didn't have a week because the judge in the particular case had given me only three weeks to come in with an attorney, and I now had less than a week left.

13. TERRY HARPER. Also recommended by S.D. Bar Assn. He listened and told me he would have to first discuss the case with his partner, but that in any event I should leave them a retainer of $2,000.00. I gave them a

check and a note from Mr. Harper that they had discovered a conflict of interest and could not take my case. The conflict was with the firm that was representing the malpractice insurance company who held the Hinchy firm's malpractice policy.

14. JOHN LEARNED. A third attorney recommended by the S.D. Bar Assn. as an attorney who handled malpractice type suits. I went to his office. Spoke with Mr. Learned about thirty minutes after which he turned me over to his clerk, who asked questions and took notes for nearly two hours. When Mr. Learned returned and reviewed with the clerk, he then told me that I had several possible causes of action against various defendants including the malpractice suit, and several separate claims there. He directed his clerk

to get more details. I left and was to call him back after he had had the chance to further study my case. I returned the following Tuesday and was regretfully informed that he had discovered a conflict of interest with the same firm as had Mr. Harper, Ault, Midlam, Reynolds firm, representing Hinchy's insurance carrier. Mr. Learned did kindly refer me to another attorney.

15. STAFFORD PRANTE. I went to his office on a Thursday. The hearing for which I needed counsel was the following Monday. We arranged to meet the next day, Friday, but it turned out he couldn't so we agreed to meet on Sunday. We did meet then and spent several hours going over my case, at the end of which discussions Mr. Prante informed me that he could not become my lawyer because he had a conflict of interest with Mr. Witte of the Hinchy firm. He,

Mr. Prante, told me that he believed I had a good case, but that the only way I was going to get a lawyer to handle it was to go out of San Diego County, to another county entirely.

16. MICHAEL LONDON. In February of 1980 Mr. London agreed to take on my case, but only after I had gone and returned to his office with a cashiers check in the amount of $2,520.00, which I duly gave him. This was on a Monday, and he was to appear in court on my behalf the following Monday. He didn't show up in court, failed to give timely notice that he would not be appearing, which caused me considerable trouble with the judge then involved. When I confronted him and demanded my money back he refused to give it to me. I left his office threatening to go to the District Attorney. He eventually returned

$1,250.00 of the total amount I had been obliged to give him as retainer, telling me that it was worth it to me "just to take my burden upon his shoulders. He has never returned the balance.

I also consulted the A.C.L.U. who kept my papers for two weeks before telling me they "could not see how they could help me." I contacted two women "women's" rights lawyers who had been recommended to me by a friend in Washington. But when they examined my facts and the fact that I needed primarily to sue a prominent San Diego law firm, soon discovered that mine was not the type of "women's rights" case that they handled. I talked with several other attorneys whose names I cannot now recall, but when and if I locate correspondence and information concerning them, I will seek leave to amend this

Declaration to include them. And consider, not only did the Hinchy firm get some 14,000 dollars from me and are suing me for 32,000 dollars more for providing me with negative legal services, or none at all, but the lawyers in San Diego County, above mentioned, have charged and kept from returning to me TWO THOUSAND dollars for telling me they could not represent me at all. Am I not to be permitted some reasonable wonderment, some reasonable doubts as to the legal profession in this County, some reasonable belief that someone, something in any event has systematically acted, whether programmed or not to deprive me of proper and competent legal counsel to protect me. Can this be mere coincidence? I don't think it is unreasonable to suspect that it is not. However, one lawyer did earnestly

and bravely try to help me.

17. GEORGE G. DICKERSON, ESQ. Formerly a prominent attorney in Washington, D.C., and senior member of three fine law firms in Virginia, until a stroke incapacitated him. A true Southern Gentleman. One of the patients in my health care facility. Knowing of my case and causes for some time, and the fruitless attempts to obtain a lawyer, he got up from his bed and with a "walker" to propel himself he got into the court house, the courtroom, and finally before the judge and bench. There he turned to look at me, "What do you want me to say, Mary?" He seemed near collapse so I helped him to a chair, and then rose back up, once again to defend myself. Mr. Dickerson kindly gave me a letter to show any other attorney, lest they use his (attempted) appearance for

me in court to reject me. (See Exhibit D.) Whenever I am able to locate correspondence from the various attorneys mentioned above and others, I will attach the same as exhibits herewith.

I pray that the foregoing declaration will prove to the Court my sincerity when I have said that I have tried to get a lawyer. And that I am neither hysterical, frivolous, nor vexatious, and the substance of my claims are supported by a multitude of facts (several of the above-mentioned attorneys told me that in no uncertain way.) But the forms and procedures for presenting the substance have been denied me, whether by design or not, though the former is strongly indicated, and that amounts to the denial of Due Process of the Law, my right.

I pray that the Court will recognize

my need and help me within the frame-work of my motion as the Court has the power to do; or any other help or relief within the Court's power, which may seem right or just to provide me.

Respectfully submitted.

I declare under penalty that the foregoing is true and correct. Executed on October 26, 1982 at San Diego, California.

Mary Vaughn
MARY VAUGHN

May 19, 1977

Dear Mary Vaughn:

Listed below are the checks written to Hinchy, Witte, Wood, Anderson and Hodges.

DATED	CHECK NO.	AMOUNT
May 29, 1976	1945	1,000.00
July 1, 1976	2035	1,000.00
July 15, 1976	2131	600.00
August 3, 1976	2211	1,000.00
September 1, 1976	2320	1,000.00
October 1, 1976	2801	1,000.00
October 11, 1976	2883	1,222.85
November 5, 1976	3051	1,099.00
December 7, 1976	3210	1,067.50
December 10, 1976	3261	23.00
December 10, 1976	3262	415.00
January 5, 1977	2506	1,078.00
January 20, 1977	2622	133.00
February 2, 1977	2668	602.00
February 4, 1977	2674	91.00
March 22, 1977	6335	3,344.50
		$14,675.85

I hope this will be of some help to you.

Sincerely,

Patricia L. Wilcox

Patricia L. Wilcox

STEPHEN E. SMITH

La Jolla Bank

Prospect and Ivanhoe
La Jolla, California 92037

Escrow No. 5-697

4908

May 16, 1988

100

Escrow Check

LJB&TC [illegible] 85 CTS

Pay to the order of BALBOA MANOR, INC. and SMALL BUSINESS ADMINISTRATION

Carolyn Taylor

⑈004908⑈ ⑆122-3296⑆ 01200498⑈05 ⑈00035928⑈

SMALL BUSINESS ADMINISTRATION

By: [illegible]

Terrill K. Ashker
District Counsel

Balboa Manor, Inc.
Mary Vaughan

PAY TO THE ORDER OF
San Diego Trust & Savings Bank
San Diego, California
FOR DEPOSIT ONLY
MICHAEL WHITE
ANDERSON, HODGES
A LAW CORP.
Trust Account
and not individually

MICHAEL WHITE
A. KENDALL WOOD
GAYLE F. ANDERSON
JAMES W. HODGES
JAMES C. DAVIDSON
DEBORAH A. BEEBE
0101-66-03

HUNCHIN, WITTE, WOOD, ANDERSON & HODGES
A LAW CORPORATION

Make Payable To:
San Diego Federal Savings
and Loan Association

Kathy A. Biggs
Bookkeeper

Hinchy, Witte, Wood, Anderson
and Hodges

9-77-205H/pjm

(SPACE BELOW FOR FILING STAMP ONLY)

HINCHY, WITTE, WOOD, ANDERSON & HODGES
A LAW CORPORATION
3232 FOURTH AVENUE
SAN DIEGO, CALIFORNIA 92103
AREA CODE 714
TELEPHONE 291-2232

Attorneys for Defendant

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. BALBOA MANOR, INC., a California corporation and DOES I through 20, inclusive, Defendants.	NO. 395533 SUBSTITUTION OF ATTORNEYS

Balboa Manor, Inc., a California corporation, substituted itself as its own attorney in place of Hinchy, Witte, Wood, Anderson & Hodges, A Law Corporation. All pleadings, notices, documents, etc., may be served upon the corporation by delivering the same to Mary Vaughn, President, at 1119 28th Street, San Diego, California, 92102.

DATED: 6/14/79

Mary Vaughn
MARY VAUGHN, President
Balboa Manor, Inc.

We agree to this substitution.

DATED: 6-14-79

HINCHY, WITTE, WOOD, ANDERSON & HODGES
A Law Corporation

By: J. William Hinchy
J. WILLIAM HINCHY

GEORGE G. DICKERSON, ATTORNEY AT LAW
303 NORTH 47TH STREET, SPACE A-5
SAN DIEGO, CALIFORNIA 92102
TELEPHONE: 714/ 263-0250

DEAR MS. VAUGHN:

THIS LETTER IS WRITTEN TO ADVISE YOU THAT DUE TO MY HEALTH PROBLEMS, I WILL BE UNABLE TO SERVE AS YOUR COUNSEL, I.E. ATTORNEY AT LAW, BEGINNING ON THIS DATE, SEPTEMBER 1, 1982.

YOU ARE HEREBY FREE TO SEEK COUNSEL IN YOUR CASE WITHOUT FURTHER OBLIGATION TO ME.

I WISH YOU SUCCESS IN FINDING ADEQUATE COUNSEL TO HANDLE YOUR COMPLEX CASES.

VERY TRULY YOURS,

GEORGE G. DICKERSON,
ATTORNEY AT LAW

SEPTEMBER 1, 1982

TO: MS. MARY VAUGHN
1119 - 28TH STREET
SAN DIEGO, CALIFORNIA 92102

Spence, Moriarity & Schuster
ATTORNEYS AT LAW

GERRY L. SPENCE • EDWARD P. MORIARITY • ROBERT P. SCHUSTER
GARY L. SHOCKEY • P. RICHARD MEYER • ROBERT N. WILLIAMS
A.A. ZVEGINTZOV

February 18, 1982

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

George G. Dickerson
Attorney at Law
P.O. Box 80878
San Diego, California 92138

Dear Mr. Dickerson:

The materials you sent concerning the case of Mary Vaughn were received yesterday, February 17, 1982, and I have had the opportunity to review them fully and in detail. Our law firm will not be able to give any assistance to you in this case. We cannot become involved in this case.

As I told you in my prior correspondence, a copy of which is attached for your reference, I did not believe we would be able to get involved in the case. Also, as I told you, I expect that you are continuing your efforts to find other counsel and encourage you to do so.

Please do not take our firm's decision not to be involved in your case as a comment on its merits in any respect whatsoever. Also, as counsel for Mary Vaughn, I urge you to keep her properly advised as to all deadlines, cutoffs, and, if applicable, and statutes of limitations.

I am returning the materials which you sent to me. Good luck in the case and in securing assistance of other counsel.

Sincerely,

Gary L. Shockey

GS:mad
Enclosures

P.O. BOX 548 • 265 WEST PEARL STREET • JACKSON, WYOMING 83001 • 307-733-7290

SULLIVAN & JONES
A PARTNERSHIP OF PROFESSIONAL CORPORATIONS
Attorneys At Law
FINANCIAL SQUARE
600 "B" STREET
SAN DIEGO, CALIFORNIA 92101
(714) 236-1611

June 17, 1982

Ms. Mary Vaughn
P. O. Box 80878
San Diego, California 92138

Re: Legal Representation

Dear Ms. Vaughn:

I acknowledge receipt of the three enclosed briefs and complaint you sent me. I have had an opportunity to review them and must inform you that we are unable to represent you in the various matters.

My decision is dictated by Rule 5-102 of the California Rules of Professional Conduct which cautions an attorney against accepting professional employment where he has a relationship to an adverse party. I am a personal friend of David Danielsen of the law firm of Ault, Midlam & Reynolds, one of the parties you have sued. In fact, three weeks ago, Dave informally discussed your lawsuit with me. As such, I perceive a conflict of interest which will prohibit me and our law firm from representing you.

In addition, the scope of the representation you desire is outside the normal course of our practice. Sullivan & Jones specializes in business litigation; the matters you are involved in do not fit within our areas of specialization.

We would recommend that you seek a referral of an attorney from one or more of the following services:

South Bay Lawyer Referral Service, 230 Glover Avenue, Suite I, Chula Vista, California, 92010, telephone # 422-5377; Legal Aid Society of San Diego, Inc., 964 Fifth Avenue, Room 430, San Diego, California 92101, telephone # 239-9611; Lawyer Referral and Information Service of the San Diego County Bar Association, 1434 Fifth Avenue, San Diego, California 92101, telephone # 231-8585; Los Angeles County Bar Association Lawyer Referral Service at 213-622-6700.

Thank you for asking us to represent us.

Sincerely yours,

Edward Patrick Swan, Jr.

EPS:jck

Enclosures

Schneider, Graf and Trio
Attorneys at Law
6032 N. Lincoln Avenue
Morton Grove, Illinois 60053

CARL N. GRAF JR.
ROY B. SCHNEIDER, JR.
EDWARD A. TRIO
TERESA HOFFMAN LISTON

TELEPHONE
(312) 965-4800
(312) 478-1802
TELEX 206589

March 25, 1982

George Dickerson, Esq.
P. O. Box 80878
San Diego, California 92138

RE: Vaughn v. Ault and Hinchy
81-0934-G

Dear George:

It was thoughtful of you to forward to me the complaint and other pleadings in the above entitled cause for my review. As I informed you, due to other pressing litigation, it will be impossible for me to lend my aid and assistance and have therefore suggested that you acquire local counsel to assist you. In that regard, after our telephone conversation of today I contacted two other counsels in the San Diego area and advised them of this matter. However, they also were unable, due to other pressing matters, to become involved.

I certainly wish that we would have been given more advance notice so that a greater opportunity would have existed to alter our schedule accordingly. I certainly wish you the best of luck with regard to this matter and please let me know the outcome of the litigation. Enclosed please find your submissions to me.

Best regards.

Very truly yours,

Carl N. Graf, Jr.

CNG/jb
Enc.